

* * * * *

ELBURNE W. MERTZ,

Appellant,

v.

Secretary, DEPARTMENT OF NATURAL RESOURCES, and Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondents.

Case No. 90-0250-PC

* * * * *

DECISION AND ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), stats., of the denial of a request for reclassification of appellant's position from NRS 2 (Natural Resource Supervisor 2) (PR 1-13) to NRS 3 (Natural Resource Supervisor 3) (PR 1-14)

FINDINGS OF FACT

1. Appellant is employed in the classified civil service in a position at Woodruff with the working title of District Fisheries Operations Coordinator and classified as NRS 2.

2 Appellant reports to Elmer Simonson, Natural Resources Administrator 2, and functions under general supervision.

3. The basic duties and responsibilities of this position are set forth on a PD (position description) signed by appellant on March 23, 1990, (Respondents' Exhibit 3) which is basically accurate as far as it goes. This PD contains the following "Position Summary" and major "Goals and Worker Activities:"

Supervision and personnel management for district field operations, cold and warm water propagation, cooperative rearing program, property management, program planning, and budget control.

* * *

30% A. Administration, Supervision, and Coordination of the NCD District Field Operations Section.

* * *

15% B. Development and Implementation of Program Plans
and Budgets

* * *

25% C. Property Management

* * *

5% D. Development and Implementation of a Training and
safety Program for Personnel in District Field
Operations

* * *

13% E. Personnel Management

* * *

5% F. Administer Cooperative Fish Rearing Program

* * *

2% G. Cooperation with Other Disciplines

* * *

5% H. Special Assignments

4. The district operations section includes the Woodruff hatchery, three trout rearing stations, three outlying rearing ponds, and three cooperative rearing ponds. Appellant's position is responsible for the supervision (directly or indirectly) of 19 permanent employees and 10 LTE's (limited term employees), and including two NRS 1's. This constitutes 56% of the fisheries personnel assigned to the NC district.

5. Appellant's position includes responsibility for hatching and spawning hybrid muskies. This is the only such program in the state and constitutes the entire hybrid program in the state.

6. Appellant's programs represent 75% of the district fisheries budget allotment for LTE's, 70% with respect to support, and 93% with respect to maintenance and development.

7. Appellant's position includes the following specific activities that are not explicitly set forth on his PD but which were discussed during his reclassification audit:

1. Provide walleye eggs to tribal hatchery to produce fish for stocking in public waters--lease contract agreement.
2. Negotiate agreements with private growers to produce and provide fish for stocking in public waters.
3. Assure that spearing mortality assessments are conducted on waters we spawn.
4. Provide technical skills and personnel related to the treaty activities in the area of construction and maintenance of equipment.
5. Provide GLIFWC [Great Lakes Intertribal Fisheries Wildlife Commission] with total stocking of all fish stocked in the ceded area of the North Central District.
6. Integrated work force with GLIFWC and area fisheries personnel in conducting population estimates. Appellant's Exhibit 8.

The percentage of appellant's total time reflected here but not on his PD is approximately 5%.

8. Appellant's responsibility with respect to habitat development projects is limited to the provision of personnel and equipment.

9. The following changes have occurred in appellant's position in recent years:

a) While appellant's position has always been involved in property management, increased agency emphasis on this area in recent years has resulted in an increased workload involving more extensive planning requirements. The time percentage involved has gone from 5% to 25%.

b) The work has become more complicated due to increased regulatory requirements involving pesticides, wastewater, etc.

c) Agency reorganization and the elimination of the area directors has not changed appellant's reporting relationship *per se*, but it has had an effect on his supervisor's supervision span resulting in less time available to work with and supervise appellant, resulting in more independence for appellant.

d) Cooperative rearing is a responsibility that has been added since 1985. The time involved in this activity (as of the date of this

transaction) is approximately 5%. Appellant's grant review program work began in November, 1989. There was a June 1, 1990 deadline for grant issuance, but all of appellant's work had to be completed before then.

e) During 1989-1990, appellant spent in excess of 400 hours on a task force that was involved in planning a new fish hatchery. This activity fell within the 5% "special assignments" section of his PD.

f) The increase in treaty rights activities since 1985 has resulted in an increase in appellant's workload and the complexity of his work.

g) Appellant has become more involved in more complex personnel activities, including serving as a subject matter expert in exam development.

10. The NRS position standard (Respondent's Exhibit 1) established in 1985, includes the following:

Classification Factors

Because of the variety of resource management programs and their varying degrees of complexity, individual position allocations have and will be based upon general classification factors such as those listed below:

Factor 1 - Scope and Impact of Work:

- a. Scope (range or extent) of the goals and accomplishments;
and
- b. Impact of the work both internal and external to the work unit.

Factor 2 - Complexity of Work:

- a. Difficulty in deciding what needs to be done; and
- b. Difficulty in performing the work.

Factor 3 - Discretion and Accountability:

- a. Extent to which the work is structured or defined; and
- b. Extent to which one is responsible to other authorities for actions taken or decisions made.

Factor 4 - Knowledge and Skills Required:

Breadth (variety) of knowledge normally required and used in completing acceptable work, and depth (degree of detailed

understanding) of knowledge normally required and used in completing acceptable work.

Factor 5 - Personal Contacts and Their Purpose:

- a. Nature of the contacts; and
- b. Purpose of the contacts.

Factor 6 - Work Environment:

Level and frequency of risks and discomforts in employees' normal physical surroundings.

Factor 7 - Physical Effort:

Level and frequency of physical effort required of employees by normal work assignments.

Organizational Considerations

Class definitions contained in this standard are based upon the current (March, 1985) organizational structure of DNR's central and field operations. Therefore, it is possible that a modification of this organization could have a significant impact on the interpretation of the class definitions contained in this standard. Consequently, application of this standard should consider the class concepts in the same context in which they were written.

* * *

II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities and listings of representative positions provide examples and patterns for both present and future position allocations. Many different programs and subprograms currently exist within the operating divisions of DNR. This position standard does not attempt to cover every eventuality or combination of duties and responsibilities either as they currently exist or may exist in the future. Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific class level if the functions of these positions change significantly in level of complexity and/or responsibility. It is intended, rather, to be a framework within which classifications can be applied equitably to the present programs and adjusted to equitably meet future personnel relationships and patterns that develop as a result of changing programs, organization, and emphasis.

* * *

NATURAL RESOURCE SUPERVISOR 2 (PR 1-13)
NATURAL RESOURCE SUPERVISOR 2 - MANAGEMENT (PR-1-13)

Definition:

This is responsible professional supervisory resource management work. Positions allocated to this class typically function in one of the following capacities: 1) as a line assistant supervisor to a higher level program supervisor or superintendent; 2) as the supervisor of a cold water and/or warm water fish propagation and rearing operation where the complexity of the operations easily distinguishes it from the objective level hatchery manager of the Natural Resource Supervisor 1 level; 3) as a forest superintendent responsible for a medium sized state forest; 4) as a supervisor of a district operations section; 5) as the assistant chief of district operations where the extent and complexity of the operation easily distinguishes it from objective level positions identified at the Natural Resource Supervisor 1 level; 6) as a manager of a major state nursery with responsibility for all nursery operations including production operations and facility maintenance; 7) as a work unit manager responsible for the implementation of work unit goals where a variety of complex programs exist; 8) as the supervisor of a specialized statewide program of standard scope; or 9) as a research project leader.

* * *

North Central Field Operations Supervisor: reporting to the District Staff Specialist/Chief of District Operations, this position is responsible for the district warm water and cold water fish propagation program, supervising the Woodruff auto mechanic and carpenter shop, preparing long-range comprehensive plans and weekly and daily work plans, preparing and controlling operating budgets, and developing training programs for field operations personnel.

* * *

NATURAL RESOURCE SUPERVISOR 3 (PR 1-14)
NATURAL RESOURCE SUPERVISOR 3 - MANAGEMENT (PR 1-14)

Definition:

This is very responsible professional supervisory resource management work. Positions allocated to this class typically function in one of the following capacities: 1) as an area program manager responsible for the implementation of all fish, forest management, fire control, or wildlife programs in a designated area of a DNR district; 2) as a forest superintendent responsible for

the management of a large State forest with varied and complex programs and facilities; 3) as the supervisor of a district field operations section, where the extent and complexity of the program easily distinguishes it from objective level operations coordinators at the Natural Resource Supervisor 2 level; 4) as a research group leader; or 5) as a central office supervisor responsible for the implementation of a program of significant statewide impact with independent responsibility for determining work strategies and controlling the technical accuracy and quality of the work product. (emphasis added)

11. Other positions which were compared to appellant's position included the following:

a) Bayfield Hatchery Manager, NRS 2, Nelson incumbent, Appellant's Exhibit 1. This position falls within the NRS 2 allocation for "supervisor of a cold water and/or warm water fish propagation and rearing operation where the complexity of the operations easily distinguishes it from the objective level hatchery manager at the Natural Resource Supervisor 1 level." NRS Position Standard, Respondent's Exhibit 1.

b) SE District Operations Coordinator, NRS 2, Rebicek incumbent, Appellant's Exhibit 2. This PD contains the following "position summary:"

Plan, supervise and coordinate fisheries logistical support for the SED Fish Management program. Supervise and coordinate fish distribution for the SED and operation of the Kettle Moraine Springs Hatchery. Supervise the four person fisheries crew and the operation of the Eagle fisheries building.

The Kettle Moraine Springs Hatchery supervisor position recently was reclassified to the NRS 2 level.

c) Lake Michigan District Operations Supervisor, NRS 3, Ogenorth incumbent, Appellant's Exhibit 3. This position's PD contains the following "position summary:"

Supervise District Operations activities which include: Wild Rose Hatchery, Wild Rose Habitat station, Calumet Harbor rough fish removal station, and Asylum Bay DFO station. Plan, direct and coordinate fish production schedules and stocking. Maintain district stocking records. Plan and direct equipment use.

This position supervises 20 employs, including two NRS 1's and one NRS 2 (Wild Rose Hatchery supervisor).

d) Southern District Operations Coordinator, NRS 3, Jaeger incumbent, Appellant's Exhibit 4. This position's position description includes the following "position summary": "Coordinates the utilization of the Southern District operations crew and equipment for the fish management program and all other district functions as parks, wildlife, etc." This position supervises 17 employes, including one NRS 1.

e) Northwest District Fisheries Operations Supervisor, NRS 3, Johannes incumbent, Appellant's Exhibit 5. The position description for this position includes this "position summary:" "Coordinate and supervise the cold water, warm water, and district habitat program and trout stream improvement in the NWD. Reports to District Fisheries Management Supervisor." This position includes 40% cold water propagation responsibility, 20% warm water propagation, and 15% habitat management. It supervises 34 employs including one NRS 2 and 3 NRS 1's.

f) Western District Operations Coordinator, NRS 3, Simonson (past) incumbent. This position had some habitat program support responsibilities with respect to the provision of heavy equipment, in addition to a fish propagation program consisting solely of rearing. This position also supervised the mechanical shop.

12. With respect to most criteria (number of fish propagation stations, number of species raised, number of fish stocked, cooperative rearing program, etc.) appellant's fish propagation program is the second largest in the state. Fish management includes other areas besides propagation — e.g., surveys, habitat improvement, habitat protection, etc.

13. Appellant submitted a reclassification request to his supervisor, Elmer Simonson, dated March 13, 1990. Appellant's Exhibit 7.

14. Appellant's reclassification request was denied by Sue Steinmetz, DNR Bureau of Personnel and Human Relations, via a memo dated May 29, 1990. Respondent's Exhibit 4.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), stats.
2. Appellant has the burden of proof to establish that respondent's action denying his request for reclassification from NRS 2 TO NRS 3 was incorrect.
3. Appellant having failed to sustain his burden, it is concluded that respondent's action denying appellant's request for reclassification from NRS 2 to NRS 3 was not incorrect.

DISCUSSION

The current NRS position standard dates from 1985. Appellant argues that it has become outmoded due to changes that have occurred in the agency since then. While there have been changes and this position standard is not as up to date as when it was promulgated, it is important to keep in mind that the standard itself recognizes that changes may dictate flexibility in its utilization and interpretation:

Organizational Considerations

Class definitions contained in this standard are based upon the current (March, 1985) organizational structure of DNR's central and field operations. Therefore, it is possible that a modification of this organization could have a significant impact on the interpretation of the class definitions contained in this standard. Consequently, application of this standard should consider the class concepts in the same context in which they were written.

* * *

II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities and listings of representative positions provide examples and patterns for both present and future position allocations. Many different programs and subprograms currently exist within the operating divisions of DNR. This position standard does not attempt to cover every eventuality or combination of duties and responsibilities either as they currently exist or may exist in the future. Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific class level if the functions of these positions change significantly in level of complexity and/or responsibility. It is intended, rather, to be a frame-

work within which classifications can be applied equitably to the present programs and adjusted to equitably meet future personnel relationships and patterns that develop as a result of changing programs, organization, and emphasis. Respondent's Exhibit 1, pp. 2, 3.

The foregoing language makes it clear that appellant is not locked in at the NRS 2 level merely because the position standard includes the North Central Field Operations Supervisor as a representative NRS 2 position. However, the agency changes since 1985 do not provide a reason to abandon the entire position standard, particularly the basic concepts found therein. For example, the section of the NRS 3 definition most relevant to this appeal is: "the supervisor of a district field operations section, where the extent and complexity of the program easily distinguishes it from objective level operations coordinators at the Natural Resource Supervisor 2 level." (emphasis added) Appellant has compared his position to other district field operations supervisors, but has failed to establish that his position compares favorably to other NRS 3 positions or that it is easily distinguishable from other objective level NRS 2 operations coordinator positions.

Appellant's operation is more extensive from a quantitative standpoint than the NRS 2 District Operations Coordinator in the Southeast District (Rebicek), and appellant's position has additional responsibilities with respect to the cooperative rearing program and special assignments. However, the Southeast District position has responsibility for some habitat development (Goal B) and also land acquisition (Goal E). It also supervises a NRS 2 hatchery manager, whereas appellant's highest level of position supervised is NRS 1. Accordingly, it cannot be said that appellant's position is easily distinguishable from the Southeast District position in terms of "extent and complexity of program."

Appellant also compares his position to several NRS 3's. Again, appellant could make a case for parity from a strictly quantitative standpoint based on such things as total number of employees supervised. However, the NRS 3 positions in question all have additional significant program elements beyond propagation that distinguish them from appellant's position from a classification standpoint.

In his posthearing reply brief, appellant argues: "[respondent] stated that movement into the Natural Resources Supervisor 3 level was based on factors beyond propagation . . . the job standards for Natural Resources Supervisor 2 and 3 [do] not state that one's job duties must extend beyond the propagation program" This mistakes respondent's position and the operation of the position standard. Movement to the NRS 3 level does not require responsibilities in addition to propagation. Rather the position standard distinguishes NRS 2 and NRS 3 level district field operations coordinators on the basis of whether "the extent and complexity of the program easily distinguishes it from objective level operations coordinators at the Natural Resource Supervisor 2 level." Respondent's Exhibit 1. Obviously one way that a program can be easily distinguished from objective level NRS 2 positions is by having additional significant program responsibilities beyond propagation.

The Opegenorth position in the Lake Michigan district has fish removal and habitat responsibilities, as well as propagation, and supervises a NRS 2. The Jaeger position in the Southern District has, in addition to fish propagation, a 30% goal to "coordinate the utilization of personnel and equipment with other District functions [such] as wildlife management, parks, etc.," Appellant's Exhibit 4, as well as responsibility for the district maintenance and carpenter shop. The Johannes position in the Northwest District has, in addition to propagation, a 15% goal for habitat management, and it supervises a NRS 2 hatchery supervisor.

In the opinion of the Commission, it is possible that appellant's cooperative rearing responsibilities might at some point be considered extensive enough to justify a NRS 3 level classification for appellant's position. However, at the time of the reclass request, this represented only about 5% of appellant's PD, and appellant had only begun the implementation of the grant program in the previous November,¹ although it was anticipated that this percentage ultimately would increase to 15%.²

¹ Pursuant to §ER 3.01(3)(b), Wis. Adm. Code, an incumbent of a position is not eligible for regrade until he or she "has performed the permanently assigned duties and responsibilities for a minimum of 6 months."

² This suggests that further review might be warranted once this activity is functioning at its full level.

Appellant also argues that the DNR reorganization has resulted in more independence for his position, even though the reporting relationship was not changed. While this factor enhances his position from a classification standpoint, it does not do too much for his case in the particular context of this appeal because of the lack of specific comparisons to the other positions used as a basis for comparison, with respect to independence or level of supervision received.

Appellant also argues that treaty rights activities have increased his workload and made his work more complex. While this contributes something to the classification analysis of his position, it is difficult to quantify and has not been shown to be of enough significance to justify a NRS 3 classification.


Appellant compared his position to the single station hatchery supervisors also classified as NRS 2. However, the position standard recognizes that the most complex hatchery operations can be at the same level (NRS 2) as the objective level district operations supervisor. In so doing, the position standard already has implicitly resolved the argument on which appellant relies — i.e., that a single station program (regardless of complexity) will be less complex than appellant's more multi-faceted district operations coordinator position.

In conclusion, while appellant's position has experienced an increase in its scope and complexity, at this time it falls short of the NRS 3 level based on the requirement that it be easily distinguishable from objective level NRS 2 positions.

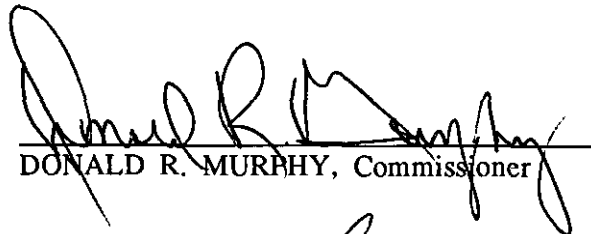
ORDER

Respondent's action denying appellant's request for reclassification is affirmed and this appeal is dismissed.

Dated: May 1, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Elburne W. Mertz
DNR
Woodruff Area Hdq.
P.O. Box 440
Woodruff, WI 54568

Carroll Besadny
Secretary, DNR
101 South Webster St.
P.O. Box 7921
Madison, WI 53707

Jon E. Litscher
Secretary, DER
137 East Wilson St.
P.O. Box 7855
Madison, WI 53707